

Application No. 09/937,460  
Paper Dated: November XX, 2009  
In Reply to USPTO Correspondence of August 11, 2009  
Attorney Docket No. 3135-011614

**Final**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 09/937,460 Confirmation No. 9480  
Applicant : PIETER T. KOOPMAN  
Filed : December 28, 2001  
Title : DEVICE AND METHOD FOR SELECTING AND  
RECORDING AN IMAGE  
Group Art Unit : 2621  
Examiner : Shawn S. An  
Customer No. : 28289

Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

**DECLARATION OF Hans Beijersbergen van Henegouwen UNDER 37 C.F.R. §1.132**

Sir:

I, Hans Beijersbergen van Henegouwen, an Officer of Isogen Holding B.V. (hereinafter referred to as "Isogen"), located in the Netherlands, and the Assignee in the above-identified application, hereby declare and state as follows:

1. I am President of Isogen Holding B.V. I am a citizen of The Netherlands and a resident of Den Haag. I have a degree in Biochemistry (university of Delft, The Netherlands). I have over 20 years of experience in the field of imaging of irradiated and/or emissive objects such as DNA and RNA structures. I was a former sales manager and later managing director of LKB Benelux (bought by Pharmacia, bought by General Electric) and founded B&L Systems in 1988 (now main activities of Isogen Holding).

2. I am familiar with the subject matter of the above-identified patent application, including the claims. The present invention, as embodied by independent claim 22, is directed to a device for selecting and recording an image of an irradiated or emissive object

comprising complexes of DNA, RNA, or proteins. The device includes an immovable object holder for positioning the object in a stationary position, at least one mirror for reflecting an image of the object, a camera, first drive means for displacing the camera substantially parallel to a rotation axis of the at least one mirror, and second drive means for rotating the at least one mirror about the rotation axis which is perpendicular to an optical axis of the camera, thereby displacing the at least one mirror for selecting a part of the image from the reflected image of the object while holding the object in the stationary position. The camera is displaceable in a viewing area in which the image of the object is reflected by the at least one mirror that lies on the optical axis of the camera. The present invention is also, as embodied by independent claim 36, directed to a method for selecting an image to be recorded with a camera which forms a part of an irradiated or emissive object comprising complexes of DNA, RNA, or proteins. The method includes the steps of: A) placing the object in a stationary position on an immovable object holder; B) reflecting an image of the object with at least one rotatable mirror that lies on an optical axis of a camera and rotates about a rotation axis which is perpendicular to the optical axis of the camera; and C) selecting with the camera and by displacing the at least one mirror a part of the image of the object to be viewed from the reflected image while holding the object in the stationary position. The camera is displaced substantially parallel to the rotation axis of the at least one mirror in a viewing area in which the image of the object is reflected by the at least one mirror.

3. The claimed imaging device, as recited above, is currently marketed and sold by Isogen under the tradename ProXima. A nexus between the claimed invention and the commercial success of the ProXima imaging systems has been established, with little to no advertising expense (*e.g.*, less than 5000 euro). Up to the present, over 350 imaging systems based on the invention, named ImaGo, OptiGo, Ultima and ProXima units have been sold in the past 10 years. The selection of a part of the image of an irradiated or emissive object is an important selling point for the sales. The handling of the sample, mainly electrophoresis gels, has become easier and less dangerous for the user. Since the user does not have to touch the gel after it has been placed inside the unit, carcinogenic substances which are often used within DNA/RNA visualization techniques, are not in contact with the user anymore. Specific

applications require detailed images of the side of a gel. In conventional imaging systems these gels have to be positioned with the side in the middle of the illumination source and therefore the opposite side of the gel can crack since it is not supported by the illumination source anymore. The handling of fragile gels has become much more convenient for the users, which is a very important sales argument for our imaging systems. The market share at this moment is not know but estimated to about 20%. At the time of the introduction of the first system equipped with the invention (ImagGo) it raised from about 5% to over 35% in the Benelux. The decrease in total market share is mainly caused by the increasing demand for high-end imaging systems (not our target group). In absolute numbers the sales of the imaging systems for our targetgroup has hardly changed since.

4. Our imaging systems have proven to be well accepted by our users since we frequently get replacement orders from existing customers. Still a very important argument is the image positioning feature (present invention) which we have implemented in all our imaging systems at this moment.

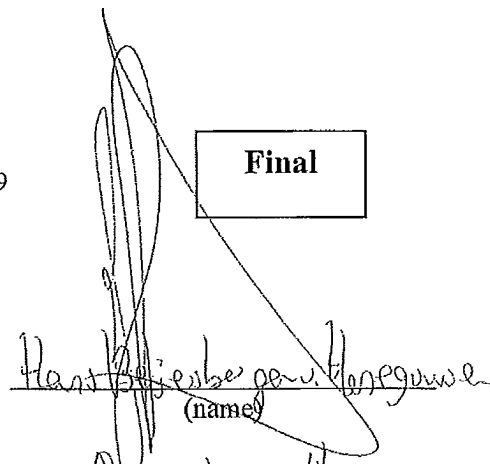
5. In addition, the present invention, as embodied by independent claims 22 and 36, has been praised by third parties in the industry. For instance, Hoefer, USA, an electrophoresis company with sales channels all over the world entered into an OEM agreement for the system mainly based upon differentiation of the product due to the image positioning feature (present invention).

8. Accordingly, a nexus between the claimed invention and evidence of commercial success can be seen from the considerable number of units already sold, the low advertising expenditures, the evidence from customers that the selection of a part of the image of an irradiated or emissive object is an important selling point, and the praise from third parties in the industry.

9. I declare further that all statements made herein of my own knowledge are true and that all statements made on the information and belief are believed to be true, and further that these statements were made with the knowledge that willful, false statements and the like so made are punishable with fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful, false statements may jeopardize the validity of

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the application or any patent issuing thereon.

  
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December 8<sup>th</sup>, 2009  
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Date

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